SUPREME COURT, U. S.

DEC 13 1967

JOHN F. DAVIS, CLERK

No. 785

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

SONJA STUMO,

Petitioner,

vs.

UNITED AIR LINES, INC., a Foreign Corporation, D. S. RITNER, R. W. HARDESTY, CAROLE McANALLEN and DIANE ROBERTSON as members of the United Air Lines System Board of Adjustment and the AIR LINE PILOTS ASSOCIATION-STEWARDESS AND FLIGHT STEWARDS DIVISION, AND CHARLES H. RUBY, President and CHARLES H. RUBY, individually,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Petitioner's Reply Brief

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A. United Offers Additional Reasons For Granting The Petition.

When Respondent United states, "ultimately this Court will want to formally announce the final demise of *Moore*" (Br. 11), it is not only being boldly presumptuous, but is conceding that the issues of this case are most important. Only they prefer this Court wait until after *Stumo* is dis-

posed of by their Board controlled by their employees. But why they are so anxious to proceed is not explained.

The complaint prays for punitive damages. If, as United suggests, this is a novelty, (Br. 11) then they are offering another reason for the Petition to be granted as suggested in *Republic Steel* v. *Maddox,* 379 U.S. 650, 657n. 14. United does not claim punitive damages, including those for the slanderous remarks against Petitioner, are within the powers of its Board.

B. United Admits to Silence Following the Submission.

And when United vaguely hints (Br. 2) the Petition has misstatements, they are overlooking that most of the references to the record are to material submitted by United. Yet, no one questions the union's power to submit the grievance or the Board's power to decide it (R. 60-61), and this talk by United of ALPA's authority is nonsense (Br. 5). Actually, United has always insisted the grievance could be withdrawn. (R. 27). Of course it will be, if the trial court has jurisdiction to hear the merits of the cause.

United admits it did not reply to our letters (R. 321, 322) of June 21 and 28, (although they promptly replied to all letters prior to the union's June 15 submission) asking when the Board would meet. Also, the letters were an attempt to obtain a neutral referee to sit at the Board's first hearing and to lay the basis for a fair trial. The attempts were futile. Although United was silent (R. 305), the Board did meet and the labor contract expressly stated that the Board shall consider all matters before it (R. 61). For Petitioner, an injunction was imperative! United's brief ignores the "attempt" doctrine of *Maddox,* 379 U.S. at 652.

Incidentally, it is most interesting that United, not the union, submitted an affidavit by the union lawyer, Loomos, stating that the grievance was submitted to the Board "per Stumo's request" (R. 197). Why? He had this letter dated June 3, 1966, addressed to him from the local union chairman: (emphasis supplied)

> "Re: Discharge of Miss Stumo
>
> "On May 25, 1966, the Senior Vice President rendered the appeal decision on my case concerning Miss Stumo's discharge, a copy of which decision reached me on May 28, 1966.
>
> "The aforesaid decision is not satisfactory to me and *I hereby request* that her case be presented to the United Air Lines, Inc., Stewardesses' System Board for final hearing and determination.
>
> Sincerely yours,
> /S/ *Marilyn Holle*
> Council 8-S"

Keeping the chronological perspective, it is clear that fears about a fair trial did not develop overnight, but only after witnessing a continuous pattern of conduct (R. 8, 9 and see Petition 5, 6 and Br. 9) that demonstrated Stumo was being singled out; that union members were receiving different treatment (see *Grievance of Ellis,* Petition 8); and after an attempt to lay the foundation for a fair trial was met by silence.

This ultimately culminated in a detailed request for discovery (R. 114-116), which United quickly and successfully (R. 133) frustrated by obtaining a stay order on all discovery proceedings in the trial court. The order was part of the Appeal. Had the discovery not been stayed, this record would concretely support what United labels as "fears" and "vague speculations". Cf. *Urquhart* v. *American LaFrance Co.,* D.C. Cir. 1944, 144 F. 2d 542,

544, *cert. den.* 323 U.S. 783, *Truck Ins. Exch. v. Board of Montcalm*, 244 F. Supp. 782, 784 (1965).

Is there any other method for a discharged employee to obtain this data? Adjustment boards have no discovery procedures. (The obtaining of the "Holle letter" and the *Ellis* decision, *supra* p. 3, were a matter of luck not procedure).

C. The Board Is Not and Cannot Be Exclusive.

Edwards v. *Capital Airlines, Inc.*, 176 F.2d 755, *cert. den.*, 338 U.S. 885, involved a reinstatement grievance of two non-union pilots who had no voice in the selection of the members of the system board and the court remanded to the Board as it could not very well remand a reinstatement case any place else, *Slocum* v. *Delaware*, 339 U.S. 239, 244.

Stumo is also a non-union employee who had no voice in the selection of the Board members, only this is a case for damages and this Court, in *Union Pacific* v. *Price*, 360 U.S. 601, repeatedly called this a common law action. Passage of the amending "Act of June 20, 1966", 80 Stat. 208, was in direct response to *Price*, but it did not alter the Sec. 204, 45 U.S.C. 184, requirement that a grievance must be handled through all management levels, *Price* 360 U.S. at 604, nor did it abolish the employee's common law remedy.

United urges Petitioner to appeal to the courts after the Board decision. This gloomy prospect would effectively deny the right to a trial by jury, *Union Pacific* v. *Price*, 360 U. S. 601, 606-607. If indeed, there is any review of a Board order, *Northwest Airlines, Inc.*, v. *A. L. P. A.*, 8th Cir., 373 F.2d 136, *cert. den.* 36 L.W. 3143 (1967). See also United's footnote (Br. 4).

CONCLUSION.

Price was decided the same day as *Pennsylvania Railway Company* v. *Day*, 360 U.S. 548, which was a back pay claim similar to *Republic Steel* v. *Maddox*, 379 U.S. 650, indicating that this Court was preserving the common law remedy where individuals most need the protection of the courts—the wrongful discharge case. On the admitted facts alone, this case poignantly illustrates the need to protect this constitutional right. The writ should be granted.

Respectfully submitted,

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